

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

**MARCIANA EUGENE and RUDELL
CHERUBIN,**

Plaintiffs,

v.

KIM MILLER,

Defendants.

2007-CV-0013

**TO: Lee J. Rohn, Esq.
Sunshine S. Benoit, Esq.**

ORDER GRANTING DEFENDANT'S MOTION TO COMPEL

THIS MATTER came before the Court upon the parties' Joint Stipulation Regarding Defendant's Motion to Compel Plaintiffs to Redesignate Non-Confidential Documents (Docket No. 33). Defendant also filed a supplement to said joint stipulation.

Having reviewed the joint stipulation and Defendant's supplement, the Court finds that the designation of "confidential" of *all* Plaintiffs' medical records is improper. As the Court has ruled on numerous previous occasions, where a party's physical condition is a factor or element of the party's claims, no patient-physician privilege exists, pursuant to V.I. Code Ann. tit. 5 § 855.

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Section 855 codifies the physician-patient privilege in the Virgin Islands. However, subparagraph four (4) of said statute, provides, in pertinent part: "There is no privilege under this section in an action in which the condition of the patient is an element or factor of the claim or defense of the patient" V.I. Code Ann. tit. 5 § 855(4) (1997). The plain meaning of the provision is that there is no physician-patient privilege *in an action* where the condition of the patient is an element or factor of the claim or defense of such patient. In other words, where the "condition" of a patient (as defined by the statute) is an element or factor of a claim or defense of that patient in a civil *action*, there is no physician-patient privilege in that *action*.

Thus, since no physician-patient privilege exists in this matter, "medical records" also are not privileged nor require confidential treatment. However, because alcohol and drug abuse treatment, mental health, and AIDS/HIV diagnosis and/or treatment are protected by the Health Insurance Portability and Accountability Act (HIPAA), those records/documents are to remain confidential. The parties' confidentiality agreement should reflect the foregoing.

Accordingly, it is now hereby **ORDERED**:

1. Defendant's Motion to Compel Plaintiffs to Redesignate Non-Confidential Documents (Docket No. 33) is **GRANTED**.

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2. Plaintiffs shall, within ten (10) days from the date of entry of this order, re-produce their non-privileged, non-confidential medical records to Defendant without the word *confidential* stamped upon them.

ENTER:

Dated: May 27, 2008

_____/s/
GEORGE W. CANNON, JR.
U.S. MAGISTRATE JUDGE